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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,960	01/25/2001	R. Rox Anderson	P0547/7051 RJK	5919

7590

07/03/2003

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EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 07/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/769,960

Applicant(s)

Anderson et al

Examiner

d-shay

Group Art Unit

3739

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE — 3 — MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on April 28, 2003.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-72 is/are pending in the application.
- Of the above claim(s) 1-12, 28-38, 45-56, 61-65, 68 & 70 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 13-27, 39-44, 57-60, 66-68, 71, & 72 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 11
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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Claims 1-12, 28-38, 45-56, 61-65, 69 and 70 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 12.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-24, 42, 43, and 57-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 19 and 21-24 exactly what is being claimed is unclear as the claims appear to positively recite the human body. Further, in claims such as 57-60 exactly what is intended to be claimed by the "heater portion" is unclear. Claim 42 is indefinite as the function r is undefined this claim and its dependants will not be treated further.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Revised section 102(e): For examining all Applications, whenever filed, and for reexamining of all Patents, and for determining the prior art dates¹ of patents and certain Application Publications:

A person shall be entitled to a patent unless-

(e) The invention was described in (1) an application for patent, published under section 122 (b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21 (2) of such treaty in the English language; or

Pre-AIPA section 374: For WIPO Publication of International Applications filed prior to November 29, 2000:

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The publication under the treaty of an international application shall confer no rights and shall have no effect under this title other than that of a printed publication.

Revised section 374: For WIPO Publications of International Applications filed on or after November 29, 2000:

The publication under the treaty defined in section 351(a) of this title, of an international application designating the United States shall be deemed a publication under section 122 (b), except as provided in sections 102(e) and 154(d) of this title.

Effective Date Provisions for the amendments to sections 102(e) and 374, as amended by H.R. 2215:

Except as otherwise provided in this section, sections 4502 through 4504 and 4506 through 4507, and the amendments made by such sections, shall be effective as of November 29, 2000, and shall apply only to applications (including international applications designating the United States) filed on or after that date. The amendments made by section 4504 shall additionally apply to any pending application filed before November 29, 2000, if such pending application is published pursuant to a request of the applicant under such procedures as may be established by the Director.

Claims 13, 18, and 39 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Anderson et al (Selective Photothermolysis).

Claims 13-15, 17, 18, 39, 40, 57-60 and 71 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Chen et al.

Claims 37-41, 57, 58, 60, 66, 68, and 71 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Knowlton et al ('836).

Claims 13-7, 39-41, 43, 57-60, 66-68, 71 and 72 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Knowlton et al ('276).

Maintaining the collagen at a constant temperature would inherently cause the claimed exponential decrease.

Applicant's election with traverse of Group II in Paper No. 12 is acknowledged. The traversal is on the ground(s) that examining all the claims would not be a burden. This is not found persuasive because searching the methods would require searching other subclasses such as 128/898. Such a search would entail over 2000 documents additional to those already searched.

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The requirement is still deemed proper and is therefore made FINAL.

The examiner notes that according to the file wrapper of the instant case, three separate IDSs have been filed in the instant case, two on July 25, 2001 and one on June 10, 2002; in addition to that filed January 15, 2003. However, the examiner has been unable to locate any of the IDSs other than that most recently filed. Therefore, applicant is respectfully requested to resubmit the previous IDSs, that the art therein may be made of record in the instant case.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Shay whose telephone number is (703) 308-2215. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0944.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Shay/DI

June 20, 2003



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330